an absolute "thou-shalt-not" against trying the experiment. He thinks so because he is permeated, despite his concessions, by certain economic theories which no longer have the absolute sway that he thinks they have. His pages are full of talk about "natural" and "inexorable" laws of supply and demand. The present economic and social thinking and action are less sure that the long-established is necessarily the inexorable. In this economic controversy Mr. Brown is asking our courts to take sides. To the extent that he thinks the Constitution incorporates any specific economic theory, to this extent he would make of the Constitution a more temporal and more partisan document than it is. If his point of view prevailed, "a constitution, instead of embodying only relatively fundamental rules of right, as generally understood by all English-speaking communities, would become the partisan of a particular set of ethical or economic opinions, which by no means are held *semper ubique et ab omnibus.*" (Mr. Justice Holmes, in *Otis* v. *Parker*, 187 U. S. 606, 609). Fortunately a larger view of the Constitution is prevailing. So far as constitutional law is concerned, at all events, we are getting away from the notion that the commandments were given to Moses at Manchester. F. F.

OXFORD STUDIES IN SOCIAL AND LEGAL HISTORY. Edited by Paul Vinogradoff. Vol. IV. The History of Contract in Early English Equity. By W. T. Barbour. The Abbey of Saint-Bertin and Its Neighborhood, 900–1350. By G. W. Coopland. Oxford: The Clarendon Press. 1914. pp. vii. 236, 166.

The first of these two essays furnishes the legal contribution to the fourth volume of Professor Vinogradoff's series. Herein Professor Barbour discusses the history of contract in chancery in the fifteenth century, based on an original investigation in the petitions to the chancellor in the Public Record Office. This discussion is preceded by a brief review of contract at common law. He has, of course, not been able to examine the some 300,000 petitions and cases from Richard II. to the early years of Henry VIII., but has made a judicious selection and has printed a number of them in the appendix. The treatment consists of a careful classification of the instances in contract in which the chancellor took jurisdiction. The classification of the petitions is as follows: Petitions brought in chancery despite the existence of a remedy at common law in theory; relating to obligations under seal; for the recovery of debts; for the recovery of personal property; against vendors of chattels; against vendors of lands; marriage settlements; partnership; agency; guarantee and indemnity; general. His generalization, stated with some hesitancy, is that the chancellor did not confine his jurisdiction in enforcing parol agreements to cases where there was a tort to the plaintiff or unjust enrichment of the defendant, as Professor Ames has suggested. Rather, the chancellor asked whether the promisor had made such a promise as in reason and conscience he ought to perform. A bare promise was perhaps not enough without more. His inquiry was whether the enforcement of the promise would further some general interest. Herein the attitude was the reverse of the contemporary common law, which looked primarily at the promisee and compelled him to show facts amounting to a deceit.

That the chancellor acted with a very free hand in granting early petitions in accordance with a good conscience, is clear from the calendars and early reports. Petitions were fashioned for widely different reasons; compare the petition in *Dodd* v. *Browning* (1 Cal. Proc. Chan. xiii., Temp. Henry V.), where the petitioner asked for relief as an old servant of the chancellor. Relief granted

must have varied greatly with each chancellor. "Equity is according to the conscience of him that is chancellor, and as that is larger or narrower so is equity." [1] Many carefully collected precedents brought to light by Professor Barbour demonstrate this; as well as the very difficulties which he has confessedly met in framing any generalization to show a systematic equity jurisdiction in the fifteenth century. It is a gain to the study of legal history that so thorough an investigator as Professor Barbour has found time to explore the mass of early chancery proceedings and bring to light so much unpublished material.

Mr. Coopland has traced in the second essay, which furnishes the economic contribution to the Studies, the details of the advent of peasant colonists in a district of Northern France with its center at St. Omer, just south of Calais and Dunkirk, and the process by which they gradually acquired holdings almost amounting to ownership. The chief value of the investigation consists in the exact data upon which the generalizations are based. The labor has been performed just in time. It is unlikely that in the future this region will yield much fruit for patient and careful investigators of the exact basis of economic theory such as Mr. Coopland. J. W.

CRIMINOLOGY. By Baron Raffaele Garofalo. Translated from the first Italian and the fifth French editions. By Robert W. Millar. Boston: Little, Brown and Company. 1914. pp. xl, 478.

This entire book may be summed up as an attempt to make the form of repression fit the criminal. It is the criminal, not his act, that threatens society. The deed is but evidence of the character of the doer who is the real danger, and whom society must suppress. The ideas of punishment, of public vengeance, of intimidation of others, — these, though important, are subordinate to the idea of social necessity. Nor is the danger measured by the moral responsibility of the criminal, as is assumed by the present law. Indeed, since all criminals are but the product of heredity and environment, a logical application of this test would empty our penitentiaries. The real problem is to assort the criminals according to the dangers they represent. To this task Garofalo brings the great practical experience that he has obtained as lawyer, prosecutor, judge, and lawmaker. The first two classes are the insane, and the legal or conventional offenders. These are, theoretically, easy to distinguish, and, presumably, easily disposed of. Garofalo's greatest contribution is the third class, the natural criminal.

The natural criminal is a moral delinquent, marked by a partial or total absence of those usual feelings of pity for the suffering of others, or respect for their property. Garofalo has no patience with the sick-man theory, or the fallen-angel theory. Natural criminals are not normal men afflicted by disease in the literal sense, nor are they, like the Pirates of Penzance, "good men who have gone wrong." It is impossible for Mr. Hyde to be also Dr. Jekyl. He is an anomaly of nature, and society must pursue nature's own remedy, — elimination. But since even natural criminals vary in their degrees of inadaptability, the means of repressing them must also vary. In a draft of an international penal code which Garofalo submits, he suggests such means as the deprivation of rights, interment in over-seas penal colonies, marooning, and the death penalty. He also recommends compensation to the victim and compulsory labor to insure it.

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[1] Selden, Table Talk; Equity.